

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CASE NO. 1:03-CR-05053 - AWI

Plaintiff.

**ORDER DENYING DEFENDANT'S MOTION  
PURSUANT TO TITLE 18 U.S.C. § 3582(c)(2)**

## ANTHONY LEON JOHNSON.

Defendant.

The defendant has filed a motion under 18 U.S.C. § 3582(c)(2), seeking a reduction in his

sentence on the basis of Amendment 782 to the Sentencing Guidelines which revises the Drug Quantity Table in USSG § 2D1.1 and reduces by two levels the offense level applicable to many drug trafficking offenses. The Government has opposed the motion on the basis that the defendant is not eligible for a reduction under U.S.S.G. § 1B1.10 because he was sentenced pursuant to the career offender guidelines. For the following reasons, the Court will deny the defendant's motion.

Section 3582(c)(2) authorizes district courts to modify an imposed sentence “in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission.” *United States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013). Effective November 1, 2014, the Commission promulgated Amendment 782, which generally revised the Drug Quantity Table and chemical quantity tables across drug and chemical types. The Commission also voted to make Amendment 782 retroactively applicable to previously

1 sentenced defendants.

2       However, pursuant to U.S.S.G. Section 1B1.10 (a)(2)(B): “A reduction in the defendant’s term  
3 of imprisonment is not consistent with this policy statement and therefore is not authorized under 18  
4 U.S.C. § 3582(c)(2) if . . . an amendment listed in subsection (c) does not have the effect of lowering the  
5 defendant’s applicable guideline range.” U.S.S.G. § 1B1.10 (a)(2)(B). A district court’s authority to  
6 modify a sentenced is constrained by the Sentencing Commission. *Dillon v. United States*, 130 S.Ct.  
7 2691 (2010).

8       The defendant pled guilty to a three-count Indictment alleging conspiracy to distribute cocaine  
9 base. The drug quantity stipulated in the guilty plea was 163.39 grams of a substance containing cocaine  
10 base. In 2003, Section 2D1.1(c)(3) of the United States Sentencing Guidelines provided a base offense  
11 level of 34 for that quantity of cocaine base. Since that time, Amendment 706, as amended by  
12 Amendment 711, reduced the base offense level for offenses involving cocaine base; then Amendment  
13 782 reduced – by two levels – the base offense level applicable to most drug offenses, including those  
14 involving cocaine base. Under Section 2D1.1, defendant’s recalculated offense level would be level 26  
15 because defendant’s offense involved between 112 and 196 grams of cocaine base. However, the  
16 defendant was not ultimately sentenced pursuant to Section 2D1.1.

17       The United States Sentencing Guidelines require that a defendant be sentenced as a career  
18 offender if: (1) the defendant was at least eighteen years old at the time that the defendant committed the  
19 crime at bar; (2) the crime at bar is a felony that is either a crime of violence or controlled substance  
20 offense; (3) the defendant has at least two prior felony convictions for either a crime of violence or a  
21 controlled substance offense; and (4) the sentencing range under the career offender guidelines result in  
22 a greater offense level than otherwise applicable. U.S.S.G. § 4B1.1(a-b) (2003). In this case, the district  
23 court determined that: (1) the defendant was over the eighteen at the time of the offense at bar; (2) he  
24 pled guilty to a controlled substance felony in the case at bar; (3) he had previously been convicted of  
25 attempted robbery, assault with a firearm, and possession of cocaine base for sale – all violent or serious  
26 drug felonies for purposes of career offender designation; and (4) the offense level under the career  
27 offender guideline was level 37. As a result, the defendant was sentenced as a career offender under  
28 U.S.S.G. § 4B1.1.

1       The defendant is not now eligible for a reduction in sentence under Amendment 782 because he  
2 was not sentenced pursuant to the sentencing table in Section 2D1.1(c). Amendment 782 has no impact  
3 on the defendant's sentence.

4       The Ninth Circuit agrees that where application of the pertinent amendment does not result in a  
5 different sentencing range, no reduction of sentence may occur. *United States v. Leniear*, 574 F.3d 668,  
6 673-74 (9th Cir. 2009) (the final sentencing range was unchanged due to the operation of the grouping  
7 rules). Accordingly, the defendant may not receive any relief under Section 1B1.10.

8       For the reasons articulated herein, the defendant's motion pursuant to Section 3582 is hereby  
9 denied.

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11 IT IS SO ORDERED.

12 Dated: September 28, 2015

  
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SENIOR DISTRICT JUDGE

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